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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. [redacted] 34

WORCESTER COUNTY TRUST COMPANY, Executor,
Petitioner,

vs.

RAY L. RILEY, Controller of the State of California, ET AL.,
Respondents.

BRIEF OF AMICUS CURIAE.

CASPER SCHENK,
Amicus Curiae.

I. H. VAN WINKLE, Attorney-General of the State of Oregon,
and,
DEAN H. DICKINSON,
Of Counsel.

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vs.

RAY L. RILEY, Controller of the State of California, ET AL.,
Respondents.

BRIEF OF AMICUS CURIAE.

The undersigned, a member of the Bar of this Court, as Amicus Curiae, respectfully requests permission to submit the following Brief.

Preliminary Statement.

We ask to be heard because we are interested in another pending case, involving similar questions. *Northern Securities Co. et al. v. U. S.*, 191 U. S. 555, 556. Refus C. Holman, Treasurer of the State of Oregon, has been summoned to appear in the United States District Court for the Northern District of Iowa, Cedar Rapids Division, in a suit brought by Hadassah Thompson Boyer, an Oregon executrix, and other beneficiaries of the Estate of one Mary Martha Reed, deceased, to contest with the Treasurer of the State of Iowa the right to collect a State inheritance tax against that estate. Complainants' bill is patterned after the one at bar.

Decedent was admittedly domiciled in Portland, Oregon, at the time of her decease, but she held in safety deposit boxes at Cedar Rapids, Iowa, certain stocks, bonds, and mortgages claimed by the taxing officers of Iowa to have acquired a business situs in the latter state. Complainants seek to interplead the treasurers of the two states, under the Federal Interpleader Act. The undersigned represent Respondent Holman, as counsel.

A copy of Section 10-633 of the Oregon Code, 1930, providing for the assessment and collection of inheritance taxes in the name, and for the benefit of, that state is hereto attached marked Appendix A.

This brief is filed with the consent of the attorneys for Respondents herein.

General Proposition.

We respectfully submit that, under the Federal Interpleader Act and the Constitution of the United States, the Federal Courts are without jurisdiction to interplead inheritance tax officials of different states.

If it is admitted that a state inheritance tax official is acting in legal conformity with constitutional statutes of his state, then the taxpayer is not denied due process, and a suit against the official is, in fact, a suit against the state, and, without its consent, contravenes the Eleventh Amendment. If the tax official's alleged claims are in violation of law, they cannot be regarded as adverse to, or preclude the claims of other states. In the absence of adverse claims, the Federal Interpleader Act is inapplicable. Where adverse claims are held by sovereign states, they cannot be interpleaded without the states' consent.

In either event, the Federal District Courts are without jurisdiction.

Points and Authorities.

1. Neither the language nor the history of the Federal Interpleader Act reveal any legislative intention to reach such suits as are involved in this case.

Judicial Code, Section 24 (26), as amended, 28 U. S. C. A. Section 41 (26).

Report of the Committee on the Judiciary submitted with the Bill, 74th Congress, First Session, Senate Report No. 558, April 15, 1935, to accompany S. 1277.

House Report, Page 2, No. 1437, 74th Congress, First Session, July 8, 1935.

2. To invoke the enlarged jurisdiction granted to the United States District Courts by the Federal Interpleader Act, Complainants must present a bill which not only contains the averments required by the statute, but it must also be sufficient under the principles of equity. The convenience of individuals cannot prevail over the convenience of sovereign states. Considerations of individual convenience cannot supplant the Supreme Law of the land.

Missouri v. Fiske, 290 U. S. 18, 25-26.
Ex Parte Ayers, 123 U. S. 443, 485, 505-506.
Williams v. U. S. 289 U. S. 553, 576.
Monaco v. Mississippi, 292 U. S. 313, 322.
Klaber v. Maryland Casualty Co., (C. C. A. 8) 69 F. (2d) 934, 937, 939.

3. The collection of taxes under state authority will not be enjoined by the Federal courts merely because the taxes appear to be illegal or unconstitutional. It must further appear that the party taxed has no adequate remedy by the ordinary processes of the law. And the bill must show there are special circumstances bringing the case within some recognized head of equity jurisdiction.

Arkansas Building & Loan Ass'n v. Madden, 175 U. S. 269, 272.
Boise Artesian etc. Water Co. v. Boise City, 213 U. S. 276, 282.

Pittsburg etc. Railway v. Board of Public Works, 172 U. S. 32, 37.
Shelton v. Platt, 139 U. S. 591, 600.
Stratton v. St. Louis Southwestern R. Co., 282 U. S. 10, 15.

4. Complainant's bill in the instant case seeks relief in contravention of the Eleventh Amendment of the Constitution and beyond the jurisdiction of the Federal Courts.

Ex Parte State of New York, No. 1, 256 U. S. 490, 500.
Cunningham v. Macon & Brunswick R. R. Co., 109 U. S. 446, 456.
Ex Parte Ayers, 123 U. S. 443, 485.
Fitts v. McGhee, 172 U. S. 516, 529.
Hagood v. Southern et al., 117 U. S. 52.
Missouri Pacific R. Co. v. Norwood, Attorney-General of Arkansas, 283 U. S. 249, 254.

5. The allegation of a bill that complainant is threatened with collection of inheritance taxes in two states depriving complainant of due process and equal protection under the Fourteenth Amendment is a barren, unadmitted conclusion as to a merely fanciful issue.

Missouri Pacific R. Co. v. Norwood, Attorney-General of Arkansas, 283 U. S. 249, 254.
Pacific States Box Co. v. White, 296 U. S. 176, 185.
Aetna Insurance Co. v. Hyde, 275 U. S. 440, 447.

6. The Fourteenth Amendment does not guarantee judicial infallibility, and the mere possibility of conflicting decisions by state courts does not indicate failure of due process of law.

Milwaukee Elec. etc. Ry. & Light Co. v. Wisconsin, 252 U. S. 100, 106.
Central Land Co. v. Laidley, 159 U. S. 103.
Tracy v. Ginzberg, 205 U. S. 170.
Thormann v. Frame, 176 U. S. 350, 356.
Overby v. Gordon, 177 U. S. 214, 227.
Baker v. Baker Eccles. & Co., 242 U. S. 394, 403.

7. Where state taxes are concerned, due process under the Fourteenth Amendment is fully satisfied if, at some stage in the proceedings, the taxpayer has notice and opportunity to be heard.

Mt. St. Mary's Cemetery Ass'n. v. Mullins, 248 U. S. 501, 506.
Soliah v. Heskin, 222 U. S. 522, 524.
New York v. State Board of Tax Comm'rs, 199 U. S. 48, 52.
Hodge v. Muscatine County, 196 U. S. 276, 281.
Hibben v. Smith, 191 U. S. 310, 322.

We respectfully submit that, upon the face of such a record, a District Court is without jurisdiction. The majority opinion of the learned Circuit Court of Appeals, First Circuit, succinctly states the reasons why the Federal Interpleader Act, as amended, is clearly inapplicable to this class of cases. This Court, in the exercise of a sound, judicial discretion, we confidently submit, should promptly set this question at rest by refusing to review that decision.

Respectfully submitted,

CASPER SCHENK,
Amicus Curiae.

I. H. VAN WINKLE,
Attorney-General of the State of Oregon, and,
DEAN H. DICKINSON,
Of Counsel.

APPENDIX A.

INHERITANCE TAX LAWS OF OREGON

Effective June 12, 1935.

§ *10-633 O. C. 1930. Tax due and unpaid—Duty of treasurer.* If the state treasurer shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons liable therefor to pay the same, he shall notify the prosecuting attorney of the county in writing of such failure or neglect, and such prosecuting attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the county court for a citation citing the persons liable to pay such tax to appear before the court on the day specified, not more than thirty days from the date of such citation, unless the court, for good cause shown, grants a longer time, and show cause why the tax should not be paid. The county court, upon such application, and whenever it shall appear to him that any such tax accruing under this act has not been paid as required by law, shall issue such citation, and a service of such citation, and the time, manner, and proof thereof, and the hearing and determination thereon, shall conform as near as may be to the provisions of the probate practice; provided, that where no provision is made for manner of such service or proof of same, the court or judge, at the time such order or citation is issued, shall direct the manner of giving notice and proof of the same; and whenever it shall appear that any such tax is due and payable and the payment thereof can not be enforced under the provisions of this act in said county court, the person or corporation from whom the same is due is hereby made *liable to the state* for the amount of such tax, and it shall be the duty of the prosecuting attorney of the proper county to *sue for, in the name of the state,* and enforce the collection of such tax; and all taxes so collected shall be forthwith paid into the inheritance tax fund of the state. It shall be the duty of said prosecuting attorney to appear for and represent the state treasurer on the hearing of such citation, or of any other hearing. Whenever the county judge shall certify that there was probable cause for issuing a citation and taking the proceedings specified in this section,

the state treasurer shall file with the secretary of state a duly verified itemized account of all expenses incurred for the service of the citation, and other lawful disbursements not otherwise paid, and the secretary of state shall thereupon draw his warrant upon the state treasurer for the payment thereof, and in favor of said treasurer, payable from the inheritance tax fund.